

## CCRB INVESTIGATIVE RECOMMENDATION

|   |   |                           |   |   |  |
|---|---|---------------------------|---|---|--|
| Investigator:<br>Debra Cleaver                    | Team:<br>Team # 7   | CCRB Case #:<br>200608027 | <input checked="" type="checkbox"/> Force             | <input checked="" type="checkbox"/> Discourt. | <input type="checkbox"/> U.S.              |
|   |   |                           | <input checked="" type="checkbox"/> Abuse             | <input type="checkbox"/> O.L.                 | <input checked="" type="checkbox"/> Injury |
| Incident Date(s)<br>Tuesday, 06/13/2006 5:50 PM   | Location of Incident:<br>in front of 2556 Bainbridge Avenue | Precinct:<br>52           | 18 Mo. SOL<br>12/13/2007                              | EO SOL<br>12/13/2007                          |  |
| Date/Time CV Reported<br>Thu, 06/15/2006 11:26 AM | CV Reported At:<br>IAB                                      | How CV Reported:<br>Phone | Date/Time Received at CCRB<br>Mon, 06/19/2006 4:19 PM |   |  |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
|                    |      |              |

| Subject Officer(s)   | Shield | TaxID  | Command |
|----------------------|--------|--------|---------|
| 1. POM Jose Diaz     | 25216  | 925194 | 052 PCT |
| 2. POM Erick Acevedo | 12656  | 901082 | 052 PCT |
| 3. Officers          |        |        |         |

| Witness Officer(s)    | Shield No | Tax No | Cmd Name |
|-----------------------|-----------|--------|----------|
| 1. POM Stephen Tomala | 13214     | 936023 | 052 PCT  |
| 2. POM Carlos Mendez  | 30439     | 935307 | 052 PCT  |
| 3. SGT Edwin Dejesus  | 01535     | 896836 | 052 PCT  |

| Officer(s)           | Allegation   | Investigator Recommendation |
|----------------------|--|-----------------------------|
| A. Officers          | Abuse: Officers stopped § 87(2)(b)                                       |                             |
| B. POM Jose Diaz     | Force: PO Jose Diaz used physical force against § 87(2)(b)               |                             |
| C. POM Jose Diaz     | Force: PO Jose Diaz banged § 87(2)(b)'s head against the hood of an RMP. |                             |
| D. POM Erick Acevedo | Discourtesy: PO Erick Acevedo spoke obscenely to § 87(2)(b)              |                             |

## Synopsis

At approximately 5:30pm on June 13, 2006, § 87(2)(b), § 87(2)(b), § 87(2)(b) was sitting on the steps of 2556 Bainbridge Avenue in the Bronx drinking a bottle of beer. The 52<sup>nd</sup> Precinct Conditions team observed this as they drove by. The team collectively decided to pull over and summons § 87(2)(b) (Allegation A). The investigation recommended that this allegation be exonerated. PO Jose Diaz obtained § 87(2)(b)'s ID and ran it for warrants. PO Diaz also repeatedly asked § 87(2)(b) to put the glass bottle down. § 87(2)(b) refused. The MISD warrant check results indicated that a man named § 87(2)(b), § 87(2)(b), § 87(2)(b) with the same DOB as this § 87(2)(b) was wanted on a felony warrant in Florida; the MISD results indicated that § 87(2)(b), § 87(2)(b), § 87(2)(b) was a violent predator and that officers should take caution. Almost simultaneously, § 87(2)(b) lifted his beer bottle above his head as if to throw it at PO Diaz. PO Diaz immediately exited his vehicle and restrained § 87(2)(b) by pinning him to the RMP hood (Allegation B). § 87(2)(b), § 87(2)(g)

§ 87(2)(b) The officers obtained treatment for § 87(2)(b)'s injury upon arrival at the stationhouse. Their supervisor, Sgt. Edwin DeJesus, reported § 87(2)(b)'s injury to IAB shortly thereafter. Sgt. DeJesus interviewed § 87(2)(b) that evening, at which time § 87(2)(b) made his allegations against PO Diaz. § 87(2)(b) has since filed a Notice of Claim against the city and is seeking \$2 million in damages.

## **Complainant's Statements**

§ 87(2)(b) was arrested by PO Acevedo of the 52<sup>nd</sup> Precinct at approximately 5:30pm on June 13, 2006. He received a laceration above his right eyebrow during the arrest. § 87(2)(b) was taken to the 52<sup>nd</sup> Precinct and interviewed by Sgt. Edwin DeJesus (see IAB callout, encl. 7-10). § 87(2)(b) told Sgt. DeJesus that the arresting officer purposely banged his head against the RMP four times. § 87(2)(b) also told Sgt. DeJesus that he had snorted some cocaine. Det. Capizzuto of Group 54 interviewed § 87(2)(b) at 1am on June 14, 2006. § 87(2)(b) told the detective that the arresting officer purposely banged § 87(2)(b)'s head on the hood of the RMP four times (see IAB callout, encl. 7-10). Det. Capizzuto noted that § 87(2)(b) was intoxicated. This case was referred to the CCRB on June 19, 2006.

§ 87(2)(b) was interviewed at the CCRB on July 6, 2006 (encl. 13-21). § 87(2)(b) is a § 87(2)(b)-old white male. § 87(2)(b) takes Prolixin, Clonopin, Remoran and Paxil; he also drinks alcohol and snorts cocaine. § 87(2)(b) collects social security and disability. At approximately 5:30pm on June 13, 2006, § 87(2)(b) was drinking a beer on the steps of 2556 Bainbridge Avenue in the Bronx. He was waiting for his wife, who works directly across the street, to get off work. This was § 87(2)(b)'s first beer of the day. § 87(2)(b) had snorted some cocaine a few hours prior. § 87(2)(b) was not, however, intoxicated. Four uniformed officers were driving by in a marked patrol car. The officers saw § 87(2)(b) and pulled over. "Diaz," the front seat passenger, called § 87(2)(b) over. (The investigator identified this officer as PO Jose Diaz). PO Diaz asked for his ID. § 87(2)(b) handed his license to PO Diaz. PO Diaz told § 87(2)(b) to sit down and finish his beer. § 87(2)(b) sat on the curb and continued drinking. PO Diaz still had his ID. A minute later, PO Diaz called § 87(2)(b) back over. § 87(2)(b) complied. PO Diaz asked him if he'd ever been to Florida. § 87(2)(b) said no. PO Diaz asked § 87(2)(b) if he was a § 87(2)(b). § 87(2)(b) said no. PO Diaz told § 87(2)(b) to spill out his beer. § 87(2)(b) calmly and politely replied, "What if I don't want to spill out the beer?" (When asked why he didn't comply,

§ 87(2)(b) explained that he didn't really know, but didn't understand why the officer was suddenly asking him to spill out the beer after having just told him to finish it.)

PO Diaz immediately exited the RMP and grabbed § 87(2)(b) by the back of the neck and the hair. PO Diaz told § 87(2)(b) that he was under arrest. PO Diaz slammed § 87(2)(b)'s head against the hood of the RMP at least three times. § 87(2)(b) was immediately dizzy, and his forehead began to bleed from a laceration above his right eyebrow. The three other officers remained inside the RMP. § 87(2)(b) did not resist PO Diaz in any way.

PO Diaz handcuffed § 87(2)(b). The two officers in the backseat (identified by the investigator as PO Stephen Tomala and PO Carlos Mendez) left. PO Diaz put § 87(2)(b) in the backseat and then returned to the front passenger seat. PO Diaz's partner (identified by the investigation as PO Erick Acevedo) was still in the driver's seat. § 87(2)(b) was bleeding profusely from the cut about his eyebrow. PO Diaz sat back in the car and told § 87(2)(b) that "this whole thing could have been avoided" and that there was "no need" for what happened. PO Diaz repeatedly apologized. § 87(2)(b) told the officers that his brother-in-law had just retired as a detective and that there was no reason to treat him like that. PO Acevedo replied, "That was him, not you. Shut the fuck up."

One of the officers flagged down a passing ambulance and explained that they had a bleeding person who needed treatment. The EMTs (a white female and a Hispanic male) examined § 87(2)(b) and wrapped gauze around his forehead. The EMTs did not ask him how he had been injured. § 87(2)(b) did not tell the EMTs how he was injured because PO Diaz was standing right there. The EMTs drove § 87(2)(b) to the 52<sup>nd</sup> Precinct. PO Diaz rode in the back of the ambulance. (Later in the interview, § 87(2)(b) stated that he had been mistaken about the sequence of events. The EMTs did not examine him on Bainbridge Avenue. Instead, the officers took him to the stationhouse and made him wait approximately two hours before calling the EMTs. The EMTs examined and bandaged his head at the stationhouse. § 87(2)(b) explained that he had difficulty remembering what happened because of injuries suffered from having his head banged against the RMP).

PO Acevedo searched § 87(2)(b) at the 52<sup>nd</sup> Precinct and found a small vial of cocaine. The officers put § 87(2)(b) in the holding cell. § 87(2)(b) called his wife and told her that the officer had slammed him against the RMP and that he was bleeding. § 87(2)(b) told PO Diaz that he needed to go to the hospital. Approximately two hours later, around 8pm, the same two EMTs returned and examined § 87(2)(b) in the holding cell. They wrapped gauze around his head and took him to § 87(2)(b) Hospital. PO Diaz rode in the ambulance as well. § 87(2)(b) received four stitches to the laceration on his forehead. He did not tell the doctor how he was injured because PO Diaz was standing right there.

§ 87(2)(b) left the hospital around 9pm and was taken back to the 52<sup>nd</sup> Precinct. He did not see PO Diaz at any point afterward. Internal Affairs interviewed him in the holding cell of the 52<sup>nd</sup> Precinct. § 87(2)(b) was later taken to Central Booking, but Central Booking was overcrowded and § 87(2)(b) was moved to the 48<sup>th</sup> Precinct. Around 1:30am, § 87(2)(b) told an officer that he was hallucinating and needed his psychiatric medication. § 87(2)(b) was taken back to § 87(2)(b) Hospital; the examining psychiatrist gave him medication. § 87(2)(b) was at the hospital for approximately 2 hours and was then taken to Central Booking. § 87(2)(b) saw the judge during the afternoon for June 14, 2006. He was told to return on § 87(2)(b).

Later that same day (June 14, 2006), § 87(2)(b) had a friend take pictures of his injuries. § 87(2)(b) provided these pictures to the CCRB (encl. 16-19). They document the injury to the middle of his forehead (approximately one-inch above his right eyebrow), his swollen wrists (from the handcuffs) and a scratch on § 87(2)(b)'s arm that he attributes to PO Diaz's rough treatment of him. Besides the laceration, § 87(2)(b)'s face is uninjured. § 87(2)(b) also

stated that his neck and pelvis are out of alignment, and that he has been seeing a chiropractor. § 87(2)(b) had the stitches removed by a private doctor on § 87(2)(b); he provided documentation to this effect. A few weeks after the incident, § 87(2)(b) hired an attorney and filed a notice of claim with the city.

#### **Notice of Claim (encl. 80-83)**

§ 87(2)(b) filed a Notice of Claim on July 1, 2006. He claimed that the police caused “serious and permanent physical and psychological injuries” including, but not limited to, “laceration of forehead requiring stitches, scarring, handcuff injuries, neck and back injuries and psychological damages.” § 87(2)(b) is seeking 2 million dollars in damages.

### **Results of Investigation**

#### **Arrest Paperwork (encl. 24-28)**

PO Acevedo prepared all the arrest paperwork. On the complaint form and OLBS, he noted that § 87(2)(b) was observed drinking beer in a public place and that § 87(2)(b) refused to dispose of the beer bottle when asked. PO Acevedo wrote that § 87(2)(b) became irate and acted in a violent manner, whereupon he was arrested for disorderly conduct. A subsequent search yielded a glass vial of cocaine in § 87(2)(b)'s pant pocket. PO Acevedo vouchered this vial.

#### **MISD and State Police Department Records (encl. 61-71)**

These documents indicate that the name § 87(2)(b) was run on June 13, 2006 at 5:31pm and 5:59pm. There was a hit for § 87(2)(b) § 87(2)(b) § 87(2)(b) male black, § 87(2)(b). (The § 87(2)(b) is this case is § 87(2)(b) § 87(2)(b) § 87(2)(b) male white, DOB § 87(2)(b)). § 87(2)(b) § 87(2)(b) is a § 87(2)(b) who is wanted on a felony warrant in Ft. Lauderdale, Florida. The MISD advises that § 87(2)(b) § 87(2)(b) § 87(2)(b) is “dangerous” and that “caution” should be taken.

#### **FDNY SPRINT and Medical Records (encl. 47-60)**

EMT Larry French and EMT Alisande Santiago assigned themselves this job at 5:45pm and transported § 87(2)(b) to the hospital at 6:24pm.

The ACR technician noted that § 87(2)(b) was bleeding from a laceration above his right eyebrow. The EMT noted that an officer (name not indicated) stated that § 87(2)(b) was injured while the officers were placing him in a patrol car. The officer stated that § 87(2)(b) was being uncooperative and his head against the car door. The emergency room physician echoed this explanation for § 87(2)(b)'s injuries. The physician also noted that § 87(2)(b) is schizophrenic and that § 87(2)(b) takes Prolixin, Clonopin, Remoran and Paxil. The records note that § 87(2)(b) received four stitches and was released back to NYPD custody.

#### **Overview of officer's statements**

PO Erick Acevedo, PO Jose Diaz, PO Stephen Tomala and PO Carlos Mendez were assigned to the 52<sup>nd</sup> Precinct Conditions team on June 13, 2006. PO Acevedo and PO Diaz were regular partners, but all four men worked together that day on a 1300x2125 tour. The officers were uniformed and assigned to a marked RMP. PO Acevedo drove, PO Diaz recorded, and PO Tomala and PO Mendez rode in the backseat. All four officers noted § 87(2)(b)'s arrest in their memobooks at 5:44pm. None of the officers (including PO Acevedo, the arresting officer) noted any significant details. PO Acevedo also noted that Carmen § 87(2)(b)'s (wife) came to the stationhouse to retrieve § 87(2)(b)'s property at 9:25pm. § 87(2)(b) signed PO Acevedo's memobook to indicate receipt.

#### **PO Erick Acevedo (encl. 23-30)**

PO Erick Acevedo was interviewed at the CCRB on July 14, 2006. PO Acevedo is a Hispanic male who stands 5'8" and weighs 250lbs. At approximately 5:40pm, the four officers were on

routine patrol when they observed a man (identified through the investigation as § 87(2)(b)) sitting on a stoop on Bainbridge Avenue drinking a beer. PO Acevedo pulled over and PO Diaz called § 87(2)(b) over to the RMP. § 87(2)(b) was clearly intoxicated. PO Diaz asked § 87(2)(b) for ID so that he could issue him a summons. PO Diaz also asked § 87(2)(b) to put his beer down. § 87(2)(b) produced his ID but did not put his beer down. PO Acevedo ran § 87(2)(b)'s name in the MISD terminal. The results indicated that § 87(2)(b) was wanted in Florida on a felony warrant. PO Diaz told § 87(2)(b) to put the beer down again. § 87(2)(b) refused. § 87(2)(b) repeatedly asked, "Why do I have to put my beer down?" PO Diaz asked § 87(2)(b) to put his beer down a third time. In response, § 87(2)(b) lifted the bottle over his head as if to throw it at PO Diaz. PO Diaz immediately exited the RMP, followed by PO Acevedo and PO Mendez; PO Tomala was trapped inside of the vehicle because of a child safety lock on the rear door. PO Diaz pushed § 87(2)(b) by his shoulders against the hood of the RMP. § 87(2)(b) refused to put his arms behind his back. PO Acevedo assisted PO Diaz and the two were able to handcuff § 87(2)(b) was not injured at this point.

Someone let PO Tomala out of the vehicle. PO Acevedo started walking back to the driver's seat and PO Diaz tried to put § 87(2)(b) in the rear of the RMP. § 87(2)(b) refused to sit and kept trying to push himself back away from the RMP. PO Acevedo didn't see exactly what happened, but knew that § 87(2)(b) hit his head against the door frame as PO Diaz was trying to get him to sit in the RMP. § 87(2)(b) sustained a laceration above his eyebrow.

PO Acevedo got into the driver's seat; § 87(2)(b) sat behind him, and PO Diaz sat next to § 87(2)(b). PO Mendez and PO Tomala walked back to the precinct. § 87(2)(b) said something about his brother-in-law being a detective. The officers ignored him. Neither officer cursed at § 87(2)(b). The officers drove back to the stationhouse. There was an ambulance in front of the building. The officers flagged the EMTs down and asked them to treat an injured prisoner. The EMTs cleaned up § 87(2)(b)'s head and bandaged it. PO Acevedo searched § 87(2)(b) and found a vial of cocaine in his pocket. § 87(2)(b) admitted that he had done some cocaine earlier that day; he also asked PO Acevedo if he could have the cocaine back. PO Acevedo did not return the cocaine. PO Acevedo obtained § 87(2)(b)'s pedigree information and gave this to the desk sergeant. Sgt. DeJesus verified the arrest. PO Acevedo told Sgt. DeJesus what happened to § 87(2)(b)'s head.

Someone called an ambulance for § 87(2)(b). The same two EMTs returned to take § 87(2)(b) to the hospital. It had been approximately 30-40 minutes since § 87(2)(b)'s arrest. PO Diaz went to the hospital while PO Acevedo started the arrest paperwork. He prepared the medical treatment of prisoner report. Someone, PO Acevedo could not recall whom, called § 87(2)(b)'s wife. She came to the precinct at 9:25pm to pick up § 87(2)(b)'s possession. She signed PO Acevedo's memobook to indicate receipt.

§ 87(2)(b) returned from the hospital; he had received stitches to close the laceration above his eye. Other officers later took § 87(2)(b) to Central Booking. PO Acevedo could not recall if he was still at the stationhouse when that happened. PO Acevedo had never seen § 87(2)(b) before this arrest and has not seen him since. He did not know what happened with the arrest.

#### **PO Jose Diaz (encl. 34-35)**

PO Jose Diaz was interviewed at the CCRB on July 14, 2006. PO Diaz is a Hispanic male who § 87(2)(b). His statement was substantively similar to PO Acevedo's. PO Diaz explained exactly how § 87(2)(b) was injured. PO Acevedo walked back to the driver's seat as PO Diaz led § 87(2)(b) toward the backseat of the RMP. § 87(2)(b) refused to sit in the car. § 87(2)(b) squirmed his shoulders and pushed himself back away from the car. As a result, § 87(2)(b) hit his head on the doorjamb as he sat in the car. The contact caused the laceration above his eyebrow; § 87(2)(b) immediately began to bleed.

PO Diaz also elaborated on the MISD results: he confirmed that the positive hit on the scene and added that the terminal advised to “proceed with caution.” The officers ran § 87(2)(b) s name again at the stationhouse, and found out that the § 87(2)(b) who was wanted in Florida was actually a black male. PO Diaz explained that the MISD terminals provide only the basics, whereas the system in the stationhouse provides very detailed information.

Finally, PO Diaz confirmed that he was the officer who called § 87(2)(b) s wife and told her what happened. Like PO Acevedo, PO Diaz stated that he had never seen § 87(2)(b) before this incident and had not seen him since.

#### **Sgt. Edwin DeJesus (encl. 39-40)**

Sgt. DeJesus called IAB on June 13, 2006 at 7:53pm. He stated that PO Acevedo observed § 87(2)(b) drinking a beer in front of 2556 Bainbridge Avenue. He stated that PO Acevedo could not issue a summons as § 87(2)(b) did not provide ID. PO Acevedo placed § 87(2)(b) under arrest. Sgt. DeJesus stated that § 87(2)(b) who was intoxicated, hit his head on the top rear passenger side door while being placed in the RMP, thereby sustaining a laceration. Sgt. DeJesus reported that § 87(2)(b) alleged that the arresting officer purposely banged his head against the RMP.

Sgt. DeJesus was interviewed at the CCRB on November 20, 2006. He worked a 1300x2157 tour on June 13, 2006 as the Conditions Sergeant. Sgt. DeJesus was not on the scene for § 87(2)(b) s arrest. He first encountered § 87(2)(b) at the 52<sup>nd</sup> precinct stationhouse. § 87(2)(b) was injured; he was also intoxicated and admitted to being on anti-depressants and cocaine. Sgt. DeJesus interviewed PO Acevedo, PO Diaz, PO Tomala and PO Mendez. PO Acevedo stated that § 87(2)(b) did not provide ID when asked and was subsequently arrested. All four officers stated that § 87(2)(b) resisted getting in the RMP and hit his head on the doorframe. Sgt. DeJesus interviewed § 87(2)(b) as well. § 87(2)(b) provided a different account of how he sustained his injury. Sgt. DeJesus could not recall exactly what § 87(2)(b) said. Sgt. DeJesus did not know if § 87(2)(b) s ID was ever obtained.

Sgt. DeJesus called IAB regarding § 87(2)(b) s injury. He provided the Command Center with the narrative the officers provided him. IAB responded to the stationhouse, but elected not to interview the officers. Sgt. DeJesus had never seen § 87(2)(b) before this incident, and has not seen him since.

#### **PO Tomala and PO Mendez**

These officers were not interviewed as their statements would not have affected the recommended dispositions.

#### **Additional Police Documents (encl. 72-75)**

§ 87(2)(b) s arrest was logged at the 52<sup>nd</sup> Precinct at 5:50pm. The desk officer noted that he was intoxicated and bleeding from a laceration to his forehead. § 87(2)(b) was taken to § 87(2)(b) Hospital at 6:20pm. He returned at 8:45pm. He was interviewed by IAB at 10:35pm, and taken to Bronx Central Booking at 11:55pm.

#### **Arrest Outcome and Criminal Conviction History (encl. 84-91)**

This is § 87(2)(b) s only arrest in New York City. § 87(2)(b) pleaded guilty to criminal possession of a controlled substance in the 7<sup>th</sup> degree (i.e. the vial of cocaine) § 87(2)(b)

#### **CCRB Histories (encl. 3-6)**

This is § 87(2)(b) s first and only CCRB complaint. PO Diaz is a 7-year veteran of the NYPD; he has never been substantiated of misconduct. PO Acevedo is a 14-year veteran of the NYPD. In CCRB 200100862, he was found to have improperly threatened one civilian with the use of

force; to have used unjustified force against another civilian; and to have failed to prepare a stop and frisk report as required. The CCRB recommended charges; the NYPD disposition is unavailable.

## Conclusions and Recommendations

## Factual Analysis

§ 87(2)(g) On June 13, 2006, at approximately 5:30pm, § 87(2) § 87(2)(b) was under the influence of cocaine and was drinking a beer while seated on the steps of 2556 Bainbridge Avenue. The 52<sup>nd</sup> Precinct Conditions Team observed this while on routine patrol and pulled over. § 87(2)(b) stated that he was sober; PO Diaz and PO Acevedo, as well as the desk officer and the sergeant who later verified the arrest, contend that he was intoxicated. PO Diaz asked for § 87(2)(b)'s ID. PO Diaz ran this ID in the MISD terminal. While waiting for the results of the warrant check, PO Diaz repeatedly asked § 87(2)(b) to put his beer down. § 87(2)(b) repeatedly refused. The MISD results yielded a positive hit for § 87(2) § 87(2)(b) § 87(2)(b) (same DOB as the § 87(2) § 87(2)(b) § 87(2)(b) in this case), a violent and § 87(2)(b) felon. § 87(2)(b) stated that he was just standing there when PO Diaz rushed from the car and pinned him to the hood of the RMP. PO Diaz and PO Acevedo stated they rushed from the RMP because § 87(2)(b) raised his beer bottle over his head as if to throw it at PO Diaz. PO Diaz and PO Acevedo stated that § 87(2)(b) resisted arrest; § 87(2)(b) denied this. § 87(2)(b) sustained a laceration to his forehead before being placed in the RMP; this laceration required four stitches to close. The crux of § 87(2)(b)'s complaint is that PO Diaz intentionally banged his head four times against the RMP hood, thereby causing the laceration. PO Diaz and PO Acevedo stated that § 87(2)(b) received this injury when he banged his head on the doorframe while being placed in the RMP. § 87(2)(b)'s face and head are otherwise uninjured.

§ 87(2)(b), § 87(2)(g)

[REDACTED]

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[REDACTED]

§ 87(2)(b), § 87(2)(g)

### **Allegations not pleaded**

§ 87(2)(b) stated that he told PO Diaz that he needed to go to the hospital as soon as he arrived at the stationhouse. He also said that PO Diaz waited almost two hours before calling for an ambulance. The FDNY sprint, however, confirms that PO Diaz flagged down an ambulance that was idling outside the stationhouse at 5:45pm (almost immediately after § 87(2)(b)'s arrest) and that the EMTs took § 87(2)(b) to the hospital at 6:24pm. It is clear that medical treatment was promptly obtained, and this allegation was therefore not pleaded.

### **Allegation A: Officers stopped § 87(2)(b)**

§ 87(2)(b) admitted that he was sitting on the steps of 2556 Bainbridge Avenue drinking a beer while waiting for his wife to finish work. PO Acevedo and PO Diaz were on routine patrol when they observed this. PO Acevedo and PO Diaz collectively decided to pull over. PO Diaz, who was sitting closer to the curb, asked § 87(2)(b) for his ID so that he could issue § 87(2)(b) a summons. § 87(2)(b) provided his ID. The street encounters legal issues memobook insert instructs that an officer can stop, question and frisk a person if the officer has “reasonable suspicion that a person is committing, has committed or is about to commit a felony or Penal Law misdemeanor” (encl. 1). It is undisputed that § 87(2)(b) was in violation of the open container law, and could have been stopped, questioned and summonsed. Had the

§ 87(2)(b), § 87(2)(g)

### **Allegation B: PO Jose Diaz used physical force against § 87(2)(b)**

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) was holding a glass beer bottle when the officers pulled over to speak to him. PO Diaz repeatedly asked § 87(2)(b) to put this bottle – a potential weapon – down. § 87(2)(b) repeatedly refused. The MISD results then indicated that § 87(2)(b) § 87(2)(b) § 87(2)(b) (a man with the same name and DOB as the § 87(2)(b) in this case) was a dangerous felon with an outstanding warrant. Almost simultaneously, § 87(2)(b) raised his beer bottle above his head as if to throw it at PO Diaz. PO Diaz exited the RMP and restrained § 87(2)(b) by pushing him against the hood of the RMP.

Penal Code Law §35.30 (Justification; use of physical force in making an arrest or preventing an escape) reads: “An officer or a peace officer, in the course of effecting or attempting to effect an arrest, or of preventing or attempting to prevent the escape from custody, or a person who he reasonably believes to have committed an offense, may use physical force when and to the extent he reasonably believes such to be necessary to effect the arrest, or to prevent the escape from custody, or to defend himself or a third person from what he reasonably believes to be the use or imminent use of force...” (encl. 2)

§ 87(2)(b), § 87(2)(g)



**Allegation C: PO Jose Diaz banged § 87(2)(b)'s head against the hood of an RMP.**

§ 87(2)(b) sustained a laceration to his forehead during this interaction. He claimed that he received this injury when PO Diaz banged his head against the hood of the RMP. § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

**Allegation D: PO Erick Acevedo spoke obscenely to § 87(2)(b)**

§ 87(2)(b) alleged that PO Acevedo told him to “shut the fuck up” in the RMP. PO Acevedo and PO Diaz denied this. § 87(2)(b), § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: